

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAVIER QUEREGUAN and	§
AUREA E. QUEREGUAN,	§ No. 727, 2010
	§
Plaintiffs Below-	§
Appellants,	§ Court Below-Court of Chancery
	§ of the State of Delaware
v.	§ C.A. No. 20298
	§
NEW CASTLE COUNTY,	§
	§
	§
Defendant/Third-Party	§
Plaintiff Below-	§
Appellee,	§
	§
and	§
	§
STATE OF DELAWARE,	§
	§
	§
Third-Party Defendant	§
Below-Appellee.	§

Submitted: February 10, 2011

Decided: April 12, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

ORDER

This 12th day of April 2011, upon consideration of the appellants' opening brief and the motion to affirm of appellee New Castle County pursuant to Supreme Court Rule 25(a),¹ it appears to the Court that:

¹ The State entered an appearance on December 3, 2010, but has not filed any response to the appellants' opening brief.

(1) The plaintiffs-appellants, Javier Quereguan and Aurea E. Quereguan (the “Quereguans”), filed an appeal from the Court of Chancery’s October 22, 2010 memorandum opinion and order affirming the legal and factual findings of the Master in Chancery in his final report dated October 8, 2009, and dismissing their claims against the defendant-appellee, New Castle County (the “County”).² The County has moved to affirm the judgment of the Court of Chancery on the ground that it is manifest on the face of the opening brief that the appeal is without merit.³ We agree and affirm.

(2) The record reflects that the Quereguans and their daughter live at 230 Maple Avenue, Wilmington, Delaware. Next to their property is a community center (formerly the Absalom Jones School) as well as a raised ball field surrounded by a retaining wall. The ball field sits at a level roughly equal to that of the community center building. Between 1975 and 2002, the County leased the building and the ball field from the Red Clay Consolidated School District (“Red Clay”). In 2002, Red Clay sold the

² Ch. Ct. R. 144. The Court of Chancery also dismissed as moot New Castle County’s third-party indemnification claims against the State of Delaware and the State of Delaware’s motion for summary judgment.

³ Supr. Ct. R. 25(a).

property to the State. Since that time, the County has leased certain interior portions of the building from the State.⁴

(3) Mr. Quereguan first filed suit against the County, Red Clay and the State in the Superior Court in 2003. He claimed that improper maintenance of the retaining wall surrounding the ball field caused water incursions that damaged his home. After a long series of procedural twists and turns, including transfer of the case to the Court of Chancery, the addition of Mr. Quereguan's wife and daughter as plaintiffs, the addition of personal injury claims, and the dismissal of the direct claims against Red Clay and the State, the Master in Chancery was assigned the case for a hearing on the liability issues. In 2008, the Master dismissed the Quereguans' personal injury claims. In 2009, following a 2-day trial, the Master found that the Quereguans had failed to prove liability and proximate cause and dismissed their property damage claims. The Court of Chancery, on *de novo* review, agreed with the Master's legal and factual findings.

(4) In its 25-page memorandum opinion dated October 22, 2010, the Court of Chancery concluded that the Quereguans had failed to prove by a preponderance of the evidence that the County, or someone whose actions

⁴ The County has consistently denied responsibility for maintenance of the retaining wall and ball field, claiming that such responsibility resides with the State. The Court of Chancery did not find it necessary to resolve that issue in its October 22, 2010 memorandum opinion.

might be attributed to the County, had, by artificial means, altered the flow of surface waters upon their property so as to proximately cause the water incursions and resulting damages of which they complain.⁵ Specifically, the Court of Chancery concluded that the Quereguans had failed to demonstrate by a preponderance of the evidence that the condition of the retaining wall surrounding the ball field had altered the volume or concentrated the discharge of water flowing onto their property.⁶

(5) The Court of Chancery's conclusions were based upon its determination that the County's experts' opinions were more reliable and persuasive than the Quereguans' expert's opinions. Among other things, the record did not support the Quereguans' expert's opinion concerning the slope of the Quereguans' property, whereas there was ample record support for the County's experts' opinions that the topography in the area runs from the northeast to the southwest and that the Quereguans' property lies at a lower elevation than other properties to the north and northeast. Likewise, the County's experts' opinion that the retaining wall surrounding the ball field actually has reduced the amount of water flowing onto the Quereguans' property also was supported by evidence in the record.

⁵ *Weldin Farms v. Glassman*, 414 A.2d 500, 502-03 (Del. 1980).

⁶ *Id.* at 502.

(6) The Court of Chancery also found, based upon the evidence produced at trial, that there are structural and maintenance issues in the Quereguans' home that have proximately caused⁷ water incursions resulting in mold and other damage, such as exposed rigid insulation and wood, faulty fascia and soffit installation, damaged vinyl siding, a leaky roof, cracked window caulk and a poorly designed downspout gutter. As for the Quereguans' claims of personal injury due to the presence of mold, the Court of Chancery concluded that, because those claims are dependent upon the Quereguans' evidence concerning the cause of the water incursions and the relationship between the water incursions and the physical damage to their property, they, too, must fail.

(7) In their appeal, the Quereguans make a number of claims that may fairly be summarized as follows: a) the Court of Chancery improperly applied the law; b) the Court of Chancery's findings of fact were erroneous; and c) the Court of Chancery improperly failed to provide them a remedy for the damage caused by the water leaking from the retaining wall.

(8) The factual findings of the Court of Chancery will be upheld by this Court unless they are clearly wrong and justice requires that they be

⁷ *Duphily v. Delaware Elec. Coop., Inc.*, 662 A.2d 821, 829 (Del. 1995).

overturned.⁸ Questions of law are reviewed *de novo*.⁹ This Court will not interfere with the Court of Chancery's discretionary determinations of witness credibility or the acceptance of one expert witness's opinion over that of another.¹⁰ We have carefully reviewed the Court of Chancery's 25-page October 22, 2010 memorandum opinion as well as the Master's decision and the record below. We find that the Court of Chancery utilized the correct legal standards and relied upon the correct substantive law in deciding this matter and committed no abuse of discretion. We, therefore, conclude that the appeal is without merit and hereby affirm the Court of Chancery's decision on the basis of its well-reasoned decision below.

(9) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

⁸ *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

⁹ *Id.*

¹⁰ *Id.*

NOW, THEREFORE, IT IS ORDERED that New Castle County's motion to affirm is GRANTED. The judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice